



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JAN 29 2009

Preston Burton, Esq.  
Orrick, Herrington & Sutcliffe, LLP  
Columbia Center  
1152 15<sup>th</sup> Street, NW  
Washington, DC 20005

RE: MUR 6093  
Transurban Group  
Transurban (USA) Inc.

Dear Mr. Burton:

On January 16, 2009, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of a violation of 2 U.S.C. § 441e, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1571.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip A. Olaya".

Phillip A. Olaya  
Attorney

Enclosure  
Conciliation Agreement

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In the Matter of	)	
	)	
Transurban Group	)	MUR 6093
Transurban (USA) Inc.	)	

## CONCILIATION AGREEMENT

This matter was initiated by a *sua sponte* submission made to the Federal Election Commission (“the Commission”) by Transurban Group, on behalf of itself and its subsidiary, Transurban (USA) Inc. (“Respondents”). The Commission found reason to believe that Respondents violated 2 U.S.C. § 441e by making contributions with funds provided by a foreign national in connection with a Federal, State, or local election.

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

**III. Respondents enter voluntarily into this agreement with the Commission.**

**IV. The pertinent facts in this matter are as follows:**

1. Transurban Group is an international toll road developer and manager with headquarters in Melbourne, Australia.

2. Transurban (USA) Inc., a wholly-owned subsidiary of Transurban Group, was incorporated on July 11, 2005, and operates from headquarters in New York, New York and offices in Alexandria, Virginia; Richmond, Virginia; and Atlanta, Georgia.

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3. 2 U.S.C. § 441e prohibits a foreign national, directly or indirectly, from making a contribution or donation in connection with a Federal, State, or local election. 2 U.S.C. § 441e(a)(1)(A); 11 C.F.R. § 110.20(b). Additionally, a foreign national may not directly or indirectly make an expenditure, an independent expenditure, or a disbursement in connection with a Federal, State, or local election. 2 U.S.C. § 441e(a)(1)(C); 11 C.F.R. § 110.20(f). Likewise, Commission regulations prohibit foreign nationals from directing, dictating, controlling, or directly or indirectly participating in the decision-making process of any person, such as a corporation, with regard to such person's Federal or nonfederal election-related activities, including decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office. 11 C.F.R. § 110.20(i).

4. A "foreign national" is an individual who is not a national of the United States and who is not a citizen of the United States or lawfully admitted for permanent residence. 2 U.S.C. § 441e(b)(2). The term likewise encompasses "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." 2 U.S.C. § 441(e)(b)(1) (citing 22 U.S.C. § 611(b)(3)).

5. Where a domestic subsidiary has generated no revenue from U.S. operations, or has failed to segregate revenues it generates from U.S. operations from funds it receives from its foreign parent company, its contributions to state and local committees cannot be considered separate from the funding it receives from the foreign parent company. Further, no director or officer of the company or its parent who is a foreign national may participate in the decision-making process with regard to making the proposed contributions. See 11 C.F.R. § 110.20(i).

6. Respondents began U.S. operations from offices in New York, New York in April 2005. Although Transurban USA began to generate income from its U.S. operations in late 2006, it did not segregate those revenues from the funding it continued to receive from its foreign parent company.

7. Between September 26, 2005 and February 1, 2008, Transurban USA contributed \$180,750 in nonfederal funds to state candidates and state political committees in Virginia. A list of these nonfederal contributions is listed in an appendix to this agreement.

8. Transurban USA immediately ceased its political activity following the discovery that those activities violated federal campaign finance laws. Further, Transurban USA has already sought full refunds of nearly all its contributions and intends to implement training to help employees identify when legal counsel is needed.

V. Respondents violated 2 U.S.C. § 441e by making \$180,750 in nonfederal contributions with funds provided by a foreign national.

VI. Respondents will pay a civil penalty of thirty-three thousand dollars (\$33,000) pursuant to 2 U.S.C. § 437g(a)(5)(A). Respondents will cease and desist from violating 2 U.S.C. § 441e. Respondents, who already have notified nearly all of the nonfederal candidates and state political committees of the need to refund the illegal foreign national contributions, will send a follow-up letter to each recipient of such contributions which have yet to be refunded. Within 30 days of the execution of this agreement Respondents will report to the Commission as to any of the listed prohibited contributions which have not been refunded.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof

has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.


X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan  
General Counsel


1/28/09  
Date

BY:

  
Ann Marie Terzaken  
Associate General Counsel  
for Enforcement

FOR THE RESPONDENT:

12/11/08  
Date

  
Preston Burton  
Partner, Orrick, Herrington &  
Sutcliffe LLP